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IN THE

Supreme Court of the United States

October Term, 1961

No. 282

ATLANTIC AND GULF STEVEDORES, INC.,
Petitioner.

v.

ELLERMAN LINES, LTD.

and

THE CITY LINE, LTD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MOTION AND BRIEF OF *AMICUS CURIAE*, THE NATIONAL ASSOCIATION OF STEVEDORES, FILED IN SUPPORT OF PETITIONER

MARTIN J. McHUGH,
JAMES M. LEONARD,
Counsel for Amicus Curiae,
THE NATIONAL ASSOCIATION OF STEVEDORES,
99 John Street,
Borough of Manhattan,
New York 38, N. Y.

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THE CITY LINE, LTD.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

TO THE HONORABLE THE CHIEF JUSTICES OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The National Association of Stevedores respectfully moves this Court, pursuant to Rule 42(3) of the Revised Rules (1954) for leave to file the accompanying brief as *amicus curiae*. The consent of the petitioner has been obtained. The consent of the respondent was requested but refused.

The interests of the movant in this case and its reasons for requesting leave to file the accompanying brief *amicus curiae* appear below.

Movant is a non-profit trade association composed of 99 firms engaged in stevedoring operations in 39 ports of the United States, including all major East, West and Gulf Coast seaports. The Association's home office is in New York. It has regional offices in Baltimore, Charleston, Cleveland, Honolulu, Mobile and Seattle. Most, if not all, of the principal stevedoring concerns in the United States are members.

Between 70% and 80% of the nation's 150,000 longshoremen are employed by the Association's members. These members handle about 70% of all of the cargo lifted in this country.

It is obvious that the interests of the Association as a group and of each of its members as individual stevedoring concerns are affected by the decision below, in that a right to trial by jury has been denied in indemnity litigation with which each of the Association's members is frequently involved.

Aside from the right to a trial by jury, which undoubtedly the petitioner will adequately present to the Court, the decision below has raised an issue which, to the movant and to the entire shipping industry, is of major significance. The Court of Appeals has by its decision created a rule which would grant indemnity to shipowners in circumstances where the shipowners own conduct should, in justice, have barred it and, at the same time, has thereby absolved the shipowner of any responsibility for safety with respect to the vessel, its appurtenances and its cargo.

Put another way, the decision below constitutes an open invitation to shipowners for the continued tendering of dangerous ships, ships for which the shipowner has no responsibility for safety, to stevedores for loading and discharge. It is this safety issue which bears directly on the high incidence of what should be preventable shipboard accidents. Movant believes that the relationship between the law of indemnity and the responsibility for effective implementa-

tion of safety standards in shipboard stevedoring operations requires the attention of this Court. Movant submits that the legal principles which have the effect of deterring accidents are just as substantial a consideration for this Court as the redress of a wrong.

We urge, therefore, the clarification and restatement of the principles of indemnity announced by this Court's recent decisions on the subject, so that the areas of responsibility for safety in shipboard stevedoring operations can be clearly understood by all.

Movant, accordingly, requests leave to file the accompanying brief so that this issue, which is of great importance to the stevedoring and shipping industries alike, can be presented to the Court.

Respectfully submitted,

MARTIN J. McHUGH
JAMES M. LEONARD
Counsel for The National Association of Stevedores,
99 John Street,
New York 38, N. Y.

New York, N. Y.

December 6, 1961

BRIEF OF THE NATIONAL ASSOCIATION OF STEVEDORES AS *AMICUS CURIAE*

Facts Pertinent To This Brief

The basic facts have been set forth in the brief filed on behalf of Atlantic & Gulf Stevedores, Inc., the petitioner. It is not necessary to repeat them here. There are other pertinent facts, however, which The National Association of Stevedores feels should be presented to the Court.

The Interest of The National Association of Stevedores *Amicus Curiae*.

The National Association of Stevedores is a non-profit trade organization of 99 firms engaged in stevedoring operations in 39 ports of the United States, including all major East, West and Gulf Coast seaports. The Association's home office is in New York. It has regional offices in Baltimore, Charleston, Cleveland, Honolulu, Mobile and Seattle. Most, if not all, of the principal stevedoring concerns in the United States are members.

Between 70% and 80% of the nation's 150,000 longshoremen are employed by the Association's members. These members handle about 70% of all of the cargo lifted in this country.

The interest of the Association in this case is two-fold:

1. The individual and direct concern of the members of the Association with the preservation of the right to trial by jury in indemnity actions.

2. The moral and economic concern that the decision below, if allowed to stand, will induce rather than deter what should be preventable shipboard accidents.

ARGUMENT

I.

All essential facts having been submitted to the jury, the Court below was not free to make new findings of fact which conflicted with those found by the jury.

Among plaintiff's claims of negligence against the vessel were:

1. The failure of the ship or its representatives to inspect the bands around the bales when the cargo was being loaded in India (R 7a*, R 65a, R 66).

2. The failure of the vessel to discharge the New York cargo at its proper destination (R 6a).

3. The failure of the ship to direct a cessation of work with knowledge that it had created an irremedial condition of peril by the manner of the stow (R 6a, R 177a).

The special interrogatories addressed to the jury did not, nor did they seek to, disclose the specific ground upon which the jury might posit negligence upon the vessel. The jury's answers to the Court's interrogatories simply found the vessel unseaworthy and its representatives guilty of negligence.

The opinion of the Court of Appeals held that the jury's finding that the stevedore had performed its duties in full accord with the terms of its contractual relations with Ellerman Lines and consonant with good stevedoring practice was erroneous as a matter of law. The Court of Appeals said (369 F 2d 201, 207):

> "Application of the principles stated to the indemnity action compels the determination, under the

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* Citations preceded by R are to pages in the Appellants Appendix in the Court of Appeals.

> particular facts here and the jury's finding with respect to Ellerman's negligence, that Ellerman is entitled to indemnity from Atlantic as a matter of law."

The "particular facts" to which the Court of Appeals adverted were found, not upon the basis of any determination by the jury, but upon the arbitrary holding that there was "ample basis for a jury fact-finding" that would support the imposition of liability for indemnity upon Atlantic & Gulf Stevedores, Inc. The Court continued (289 F 2d 201, 207):

> "As already pointed out, the record affords ample basis for a jury fact-finding that (1) use of the bale hook method in the discharge of the burlap bales constituted negligence, and (2) that the injured longshoreman was not afforded a safe place to work."

Nowhere in the Court of Appeals opinion is there considered the possibility that the jury might have found Ellerman Lines, Ltd. guilty of negligence in its failure to inspect the bands on the bales prior to the loading of the vessel in India. Surely, it is not the function of an Appellate Court to arbitrarily pick and choose among possible grounds of ship liability, to search out one which will sustain a finding of indemnity as against a stevedore to the exclusion of equally plausible ground which would preclude indemnity.

By ignoring the possibility that the jury found that Ellerman was negligent in its failure to inspect the bands prior to loading, the Court of Appeals rejected a conclusion consistent with the jury's answers to the special interrogatories and adopted, as a matter of law, the only interpretation which rendered the jury's determination inconsistent. This, for the reasons argued by Petitioner, clearly violates the 7th Amendment of the Constitution. *Dick* v. *New York Life Insurance Co.*, 359 U. S. 437, 3 L ed 2d 935, 79 S Ct 921.

II.

The decision of the Court of Appeals is in contravention of the oft-expressed policy of this Court that the furtherance of shipboard safety is of major importance in the molding of maritime law.

The problem presented by the decision below concerns itself with shipboard accidents or, in a broader sense, accidents with which a vessel on navigable waters is connected and as such fall within the jurisdiction of the admiralty law.[1]

The molding of admiralty law is peculiarly the concern of this Court because it is, to a major extent, judge-made. In *The* Tungus v. *Skovgaard*, 358 US 588, 611 3 L ed 2d 524, 539, 79 S Ct 503, 1959 AMC 813, Mr. Justice Brennan, concurring in part and dissenting in part, said:

> "Admiralty law is primarily judge-made law. The federal courts have a most extensive responsibility of fashioning rules of substantive law in maritime cases. . . . This responsibility places on this Court the duty of assuring that the product of the effort be coherent and rational. Admiralty law is an area where flexibility and creativity have been demonstrating this."

Mr. Justice Frankfurter made a similar comment in his dissenting opinion in *Mitchell* v. *Trawler* Racer, 362 US 539, 550, 4 L ed 2d 941, 949, 80 S Ct 926, 1960 AMC 1503:

> "No area of federal law is judge-made at its source to such an extent as is the law of admiralty."

The fostering of safety is of major importance in the molding of maritime law insofar as it bears upon that class of workers and those types of accidents with which the decision below is concerned. From a legal viewpoint injuries

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[1] *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U. S. 36, 87 L ed 596, 63 S Ct 488; Act for the Extension of Admiralty Jurisdiction 46 U. S. C. § 740.

to shore-based maritime workers can be divided into two categories: (1) those injuries solely caused by negligence of the stevedore, and (2) those injuries where the vessel's unseaworthiness or the vessel owner's negligence plays a role. With regard to the first classification the entire field of recompense for injury has been preempted by the terms of the *Longshoremen & Harbor Workers' Compensation Act* (33 USC § 901, et seq.). With regard to the second classification—those injuries to shore-based maritime workers, e.g. longshoremen, ship repairers, etc., in which the vessel's unseaworthiness or the shipowner's negligence is a factor, it is manifest that this Court is as much concerned with the prevention of such accidents as it is with recompensing the wrong.

Recent admiralty decisions of this Court reflects a keen concern for the preservation of the life and safety of the maritime worker.

In 1946 when the warranty of seaworthiness was extended to the very type of worker with which we are concerned here, the longshoreman, this Court said (*Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, 94-95, 90 L ed 1099, 1106, 66 S Ct 872, 1946 AMC 698.)

> "These and other considerations arising from the hazards which maritime service places upon men who perform it, rather than any consensual basis of responsibility, have been the paramount influences dictating the shipowner's liability for unseaworthiness as well as its absolute character. It is essentially a species of liability without fault, analogous to other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, the liability is neither limited by conceptions of negligence nor contractual in character. Mahnich v. Southern S. S. Co., 321 US 96, 88 L ed 561, 64 S Ct 455, supra; Atlantic Transport Co. v. Imbrovek, 234 US 52, 58 L ed 1208, 34 S Ct 733, 51 LRA (NS) 1157; Carlisle Packing Co. v. Sandanger, 259 US 255, 66 L ed 927, 42 S Ct 475, supra. It is a form of absolute duty owing to all within the range of its humanitarian policy."

In 1960 the Court again had before it a case involving the warranty of seaworthiness owing to a seaman, *Mitchell* v. *Trawler* Racer, 362 US 539, 563, 4 L ed 2d 941, 956, 80 S Ct 926, 1960 AMC 1503. In that case Mr. Justice Frankfurter, in the course of his dissenting opinion, noted that in declaring the owner's duty to a seaman to provide a seaworthy vessel:

> " . . . the Court gave expression to a policy, long discernible in American admiralty decisions of implying the warranty not merely because of customary expectations of the parties to an agreement—The English Court's basis for rejection of the warranty in Couch *v.* Steele (Eng.) supra—but as well in order to increase protection to life and property against the hazards of the sea."

The members of the majority of the Court in the *Mitchell* case had no disagreement with the above quoted principle.

A parallel can be seen in the concern which Congress has had for the safety of railroad workers.[2] This was discussed in a very recent decision of this Court involving an injury to a seaman. *Kernan* v. *American Dredging Co.*, 355 US 426, 2 L ed 2d 382, 78 S Ct 394, 1959 AMC 597. Mr. Justice Harlan, in writing for the dissenting members of the Court (on a point with which the majority did not disagree) said (355 US 426, 446):

> "In the cases involving the Safety Appliance and the Boiler Inspection Acts, the Court has repeatedly emphasized that the manifest purpose of Congress was to foster through these particular Acts the safety of employees and to make employees secure in their jobs, a purpose partially evidenced by statements prefacing each of these Acts as they were originally enacted: 'An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to . . .' follow the rules of each Act. 27 Stat 531; 36 Stat 913;

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[2] Safety Appliance Act, 45 USC § 1-6; Boiler Inspection Act, 45 USC § 22-34.

Illinois Cent. R. Co. *v.* Williams, 242 US 462, 466, 467, 61 L ed 437, 440, 441, 37 S Ct 128; Urie *v.* Thompson, supra (337 US at 190, 191). In keeping with this statement of purpose, two sections of the Safety Appliance Act expressly refer to the civil liability of employers to injured employees by abrogating the common-law defense of assumption of risk and by preserving such civil liability over a particular exception to the general liability for fines payable to the United States which is imposed on carriers for violation of the provisions of the Act. 27 Stat 532, 45 USC § 7, 36 Stat 299, 45 USC § 13."

The necessity to place responsibility for safety on those most logically capable of preventing accidents was recognized by this Court as recently as 1958 in its decision in *Weyerhaeuser Steamship Co.* v. *Nacirema Operating Co.*, 355 U. S. 563, 2 L ed 2d 491, 78 S Ct 438, 1958 AMC 501 wherein the Court noted that a shipowner was entitled to indemnity except where the shipowner was guilty of conduct which would preclude it. This was nothing short of a mandate to shipowners that they, as well as the stevedore, were to be held accountable for conduct which failed to measure up to recognized standards of safety. What those standards may be, and therefore, what conduct will actually preclude a recovery of indemnity is, or should be in each case, a question of fact for the jury upon the consideration of the pertinent evidence. *McNamara* v. *Weichsel Dampschifffahrts Ag Kiel, Germany*, 2 Cir. 1961, 293 F. 2d 900.

Some courts unmindful of the significance of the caveat "absent conduct on its part sufficient to preclude a recovery," have reserved to themselves the determination of what conduct would bar recovery of indemnity. *Calmar S/S Co.* v. *Nacirema Operating Co.*, 4 Cir. 1959, 266 F. 2d 79; *American Export Lines* v. *Revel*, 4 Cir. 1959, 266 F. 2d 82. This perhaps explains the error of the Court below in electing to treat the question of indemnification as a matter of law rather than as a matter for the determination of a jury.

A ship is a uniquely perilous instrumentality. *The State of Maryland*, 4 Cir. 1936, 85 F. 2d 944, 945. Its booms, hatches, cargo hooks, winches, steel runners, ladders and the special construction of the vessel itself present almost unparalleled hazards. Concerning this, it is not surprising that the stevedoring industry is characterized as a hazardous one by a high accident rate.[3]

The inroads which have been made in recent years upon a mounting accident rate have been brought about by conscientiously applied and faithfully administered safety programs.[4] To the exent which the stevedoring industry is capable of exercising control and dominion of the sources of peril to its workers, it has succeeded in reducing injury.

The fact remains that stevedoring operations are performed in and about a situs—the ship—which is not the stevedore's, but which is owned, operated, managed, controlled and maintained by strangers to the stevedore. The stevedore's connection with the vessel is transitory at best, while the employees of the vessel owner have a permanent and long standing association with the vessel. They are, therefore, familiar with its peculiarities and are, or should be, alive to the peculiar conditions of peril of their own ship.

Certainly stevedores are "experts" in the technique of stevedoring and certainly the stevedore should bend its

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[3] "Longshoring frequency (injury) rates are extremely high in comparison with those in general industry * * *". First Annual Report (1960) Public Law 85-742, Safety & Health Administration, Bureau of Labor Standards, U. S. Department of Labor (p. 9). "Longshoring is basically a materials handling process and as such is hazardous work * * *". "It should be noted, however, that the stevedore industry has a number of unique factors which intensify the hazardous and tend to make safety work unusually difficult". Longshore Safety Survey (1956), National Academy of Sciences—National Research Council, Publication No. 459.

[4] First Annual Report, (1960) Public Law 85-742, Safety & Health Administration, Bureau of Labor Standards, U. S. Department of Labor (p. i).

special knowledge and skills to the preservation of safety in a loading or discharging operation requiring specialized knowledge applied with skillful prudence.

But of equal certitude is the proposition that the vessel's officers and crew are "experts" also—experts in the unique dangers and peculiar perils presented by their vessel. A mate's ill-conceived stowage plan, a weakened guard rail, a creaking snatch block, a frayed and ancient length of line, a defective winch drum, a cracked hatch cover, cargo that is ostensibly safe but actually flawed and dangerous—all these are conditions which should be observed and corrected by *someone*.

By whom? By the stevedore, whose opportunity to discover and correct dangerous conditions is severely limited not only by the pressing schedule on which he operates, but also by his unfamiliarity with the vessel and its dangers?

Or, is it not more reasonable that the ultimate responsibility for an effective enforcement of adequate safety procedures should rest with those whose familiarity with the ship and its equipment is most extensive, with those whose opportunity to discover and correct defects, dangers or malfunctions is the greatest? It blinks reality to ignore the substantial contribution to longshore safety which could, should and must be made by the shipping industry.

The way to compel the enforcement of safety is the imposition of liability where an industry's standards have been lax or where the measure of reasonable care has been ignored. This can be a prompt, efficient and effective means of promoting safety.

The unthinking facility with which some courts have seized upon the "warranty of workmanlike service" language of this court has done the cause of shipboard safety grave harm. To render indemnification to the shipowner by the stevedore almost an automatic proposition of law (which

is the exact approach taken by the court below in this case) is to absolve the shipowner, and his employees from any real concern about the tendering of a reasonably safe vessel for loading or unloading.[5]

An affirmance of the decision below would regrettably sanction the formulation of a theory of liability which admits of little or no responsibility upon the vessel and its crew for longshore safety. A rule of law which allows a shipowner to turn a callous and uncaring eye upon the safety of longshoremen is a rule of law that is founded not upon reason.

The number of accidents wherein the failure of ship's equipment or a perilous shipboard condition is the substantial cause of an injury has been analyzed. Annexed to this brief is an appendix which illustrates the degree to which these defaults by shipowners have produced injuries and which, we submit, suggests the urgent need for shipowners participation in safety implementation.

Stevedore participation in safety implementation has been assured by Congress in its recent amendment to Sec-

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[5] "The most effective incentive to promoting safety, however, is the promise of a judgment based on fault and adequacy where safety standards are lax and proximately related to the injuries." Robert Klonsky "New Longshoreman—His Status in Jeopardy." 10th Annual Proceedings National Association of Claimants Compensation Attorneys. Similar recognition has been given by others to the rule which legal liability plays in the inhibition of accidents:

"Tort law also serves a proper prophylactic purpose by bringing about a prevention of accidents. Where a habitual defendant causes serious and permanent harm, imposing liability with an adequate award will tend to make employers more careful as to those they employ and in taking safety measures, e.g., in plant and manufacturing and inspection processes, so as to reduce the likelihood of disabling accidents. This is the preventive function of tort law, subsidiary to its fundamental function of compensating for harm." 19 NACCA Law Journal 29

tion 41 of the *Longshoremen & Harbor Workers' Compensation Act*. 33 USC § 941.[6]

While the reversal of the decision below is required for the reasons urged by petitioner, it is clear that the sound administration of justice demands that this Court instruct the Courts below as to the meaning of its language in *Weyerhaeuser Steamship Co.* v. *Nacirema Operating Co.*, 355 U. S. 563, 2 L ed 2d 495, 78 S Ct 442, 1958 AMC 501 and restate the controlling principles for the guidance of the trial courts and for the industry itself.

The rationale of the *Weyerhaeuser* case, as well as the decision of this Court in *Ryan Stevedoring Co.* v. *Pan-Atlantic Steamship Corp.*, 350 U. S. 124, 100 L ed 133, 76 S Ct

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[6] The joint nature of responsibility for the maintenance of safe shipboard working conditions in longshore operations has been recognized by Congress and by the regulatory bodies vested by Congress with interest in the area here under discussion.

The duty of the stevedore-employer to insure conditions of maximum work safety in longshoring is set forth in the 1958 amendment to Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 USC 941) which provides that the stevedore-employer

> "shall install, furnish, maintain, and use such devices and safeguards with particular reference to equipment used by and working conditions established by such employers as the Secretary may determine by regulation or order to be reasonably necessary to protect the life, health, and safety of such employees, and to render safe such employment and places of employment, and to prevent injury to his employees."

Pursuant to the rule-making authority thus vested in the Secretary of Labor, extensive regulations bearing on longshore safety conditions have subsequently been promulgated. See: 29 CFR, Part 9 and in particular secs. 9.11, 9.12, 9.51, 9.52 and 9.53. In part, these regulations provide that, before longshore operations commence, the vessel must produce satisfactory proof that certain specified tests and inspections have been made of the vessel's cargo handling gear. A certification of inspection by an accredited ship

(Footnote continued on next page)

232 and *Crumady* v. S/S JOACHIM HENDRIK FISSER, 358 U. S. 423, 3 L ed 2d 413 79 S Ct 445 1959 AMC 580 plus a recognition of the need to encourage safety by all those connected

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inspecting agency is sufficient compliance with the regulations. (See 29 CFR sec. 9.12)

That a correlative responsibility for safety in cargo handling must rest upon the vessel owner is to be seen from the intense concern expressed by the new Coast Guard regulations bearing upon the safety, suitability and adequacy of the ship's cargo handling gear. These regulations (which will form part of 46 CFR) are set forth in 26 Federal Register (November 23, 1961) 10995-11022, and are to take effect in 1962, and thereafter. In particular, see 46 CFR Subparts 31.01 (as amended), 31.10 (as amended), 31.37 (new), 71.25 (as amended), 71.47 (new), 91.25 (as amended), and 91.37 (new). Under the above cited regulations, the vessel owner is charged with the clear duty to maintain his vessel and its cargo handling gear in such condition as will protect the life and safety of the shoreside workers who will load and unload his ship.

It is to be anticipated that the above codification will result in a sharply declining accident rate. Yet, as experience demonstrates, no code of safety regulations, however complete and however farseeing, can be the entire answer to the safety problem. Unless the written regulation be fully supplemented by a knowing and vigilant caution, by a willingness to exercise constant care in regard to those unusual, transitory or special problems which are not, or cannot be, the subject of specific regulation, the safety battle will be but half won. Alertness to special problems can sometimes best be exercised by the stevedore, sometimes best exercised by the vessel and its crew. In any event, the prime responsibility for safety should fall upon the shoulders of the party best suited to discharge that responsibility.

The case at bar exemplifies the role that vessel diligence and vessel caution, apart from regulation, must play in fostering safety. It is submitted that the substantial cause of the injury to Leighton Beard was a default on the part of the vessel's officers and crew in an area of their special skill and competence. Yet it is difficult to see how the specific conditions of peril encountered by Beard could better have been prevented by regulation than by an enlightened common sense and diligence on the part of the ship's officers and crew.

This Court now has the opportunity, by clarifying a principle implicit in its previous decisions on the interacting responsibilities of ship and stevedore, of providing the stimulus for that diligence and common sense.

with the industry, suggests a basic test for the granting of indemnity:[7]

(1) Indemnity should be granted where the substantial cause of the accident was a foreseeable injury resulting from a substandard performance by the stevedore in an area of activity wherein the stevedore's competence and skill should have been the major factor in deterring the accident.

(2) In all other cases indemnity should be denied.

A restatement of the basic rule thusly would clarify the mutual duties of shipowner and stevedore and would doubtless do much to preserve the life and health of countless shore-based maritime workers. This case presents the opportunity for such a restatement.

Conclusion

In order that shipowners may be encouraged to participate to a greater extent in safety and thus deter preventable shipboard accidents, in order to correct the misconception of some inferior courts, including the court below, that indemnity is allowable even where the substantial cause of

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[7] *Ryan and Weyerhaeuser* dealt with factual situations in which the stevedore's negligence had created the condition judged to be unseaworthy. It is not the purport of this brief to quarrel with the legal principle that where the stevedore's substandard performance *creates* unseaworthiness indemnification should ensue. It is the failure of the lower courts to appreciate the rationale of this Court's decision in *Crumady* which causes us concern. In that case the vessel was unseaworthy through the improper setting up of a cut-off switch. The District Court specifically found that "the primary cause of the parting of the topping lift" was the creation of "a load on the topping lift greatly in excess of its safe working load." Thus the primary cause of the accident was occasioned by the negligence of the stevedores which brought the unseaworthiness of the

(Footnote continued on next page)

the accident was not stevedore's negligence and to correct the injustice of depriving petitioner of its right to a jury trial, the decision below should be reversed.

Respectfully submitted,

MARTIN J. McHUGH
JAMES M. LEONARD
Counsel for The National Association of Stevedores, Amicus Curiae,
Office & P. O. Address:
99 John Street,
Borough of Manhattan,
New York 38, N. Y.

Dated: New York, N. Y.
December 6, 1961.

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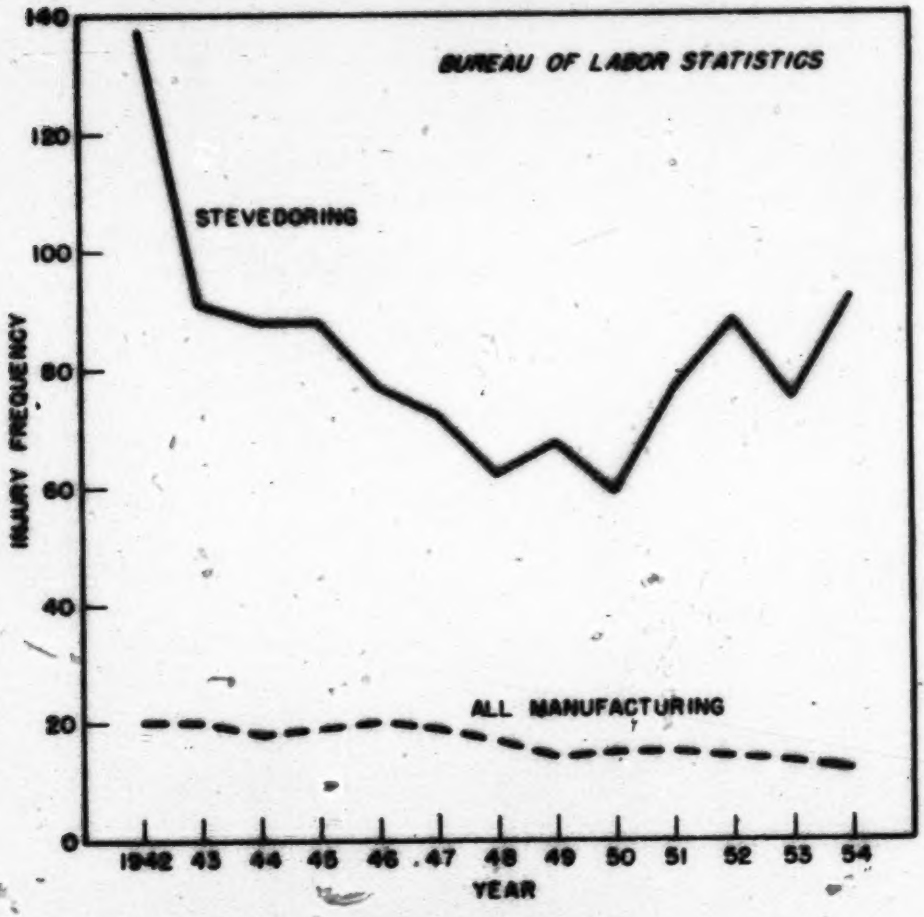
vessel into play. Neglecting entirely this Court's observation that the primary cause of the accident was the stevedore's negligence, inferior courts have been shaping a rule that interprets the Crumady language to mean that a stevedore performing any activity with, in or about an unseaworthy condition is liable for indemnity. This is the meaning of the decision of the court below in this case. See also: *Smith* v. *Jugoslavenska*, 1959 4 Cir., 270 F. 2d 176; *Weigel* v. *M/V Belgrano*, D. C. Ore. 1960, 188 F. Supp. 605.

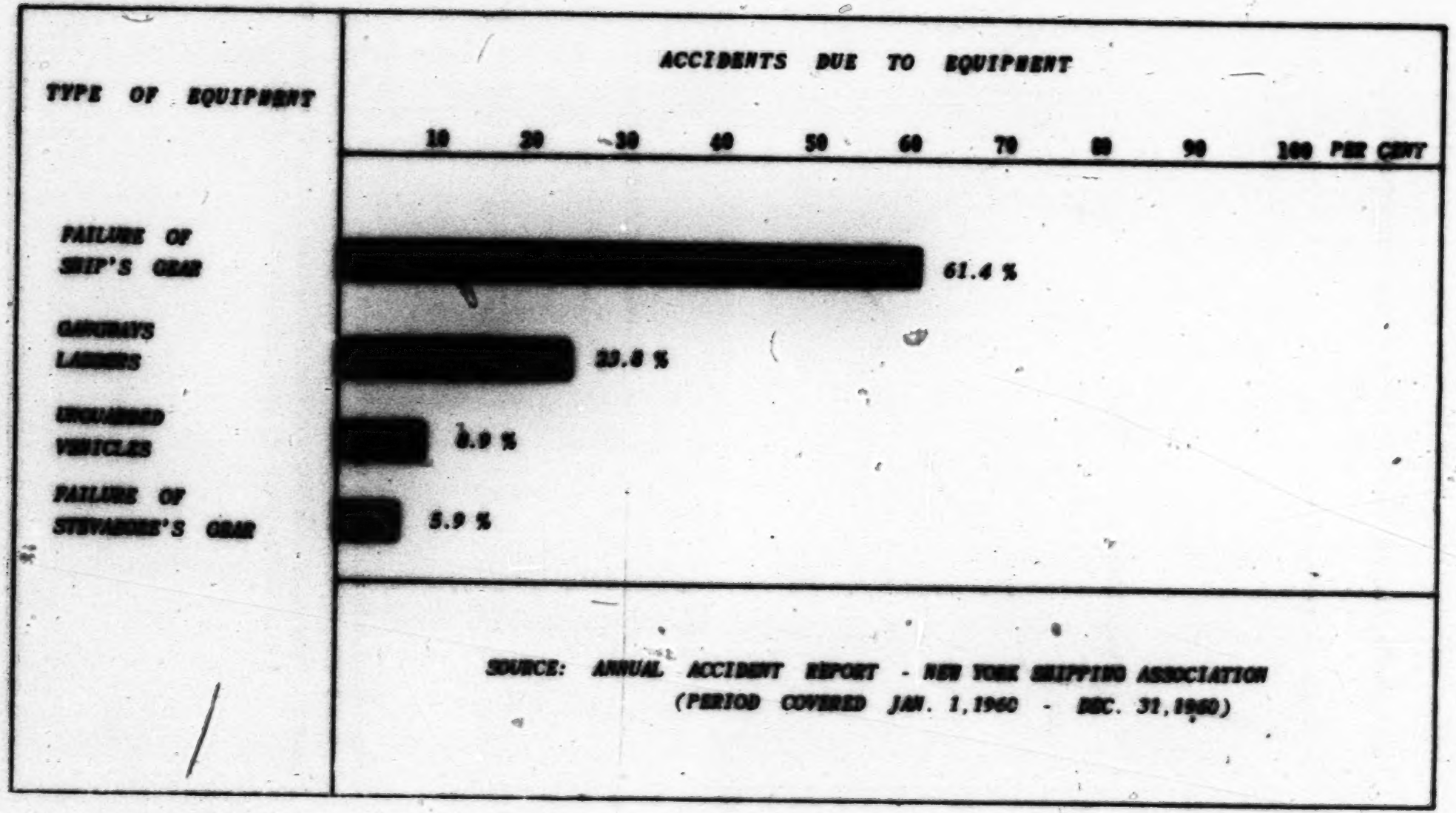
The granting of what cannot be categorized as anything but "automatic indemnity" as evidenced by these cases, is a direct result of inferior courts misunderstanding the principle that before indemnity will ensue it must be shown that the stevedore's negligence was the substantial cause of the accident.

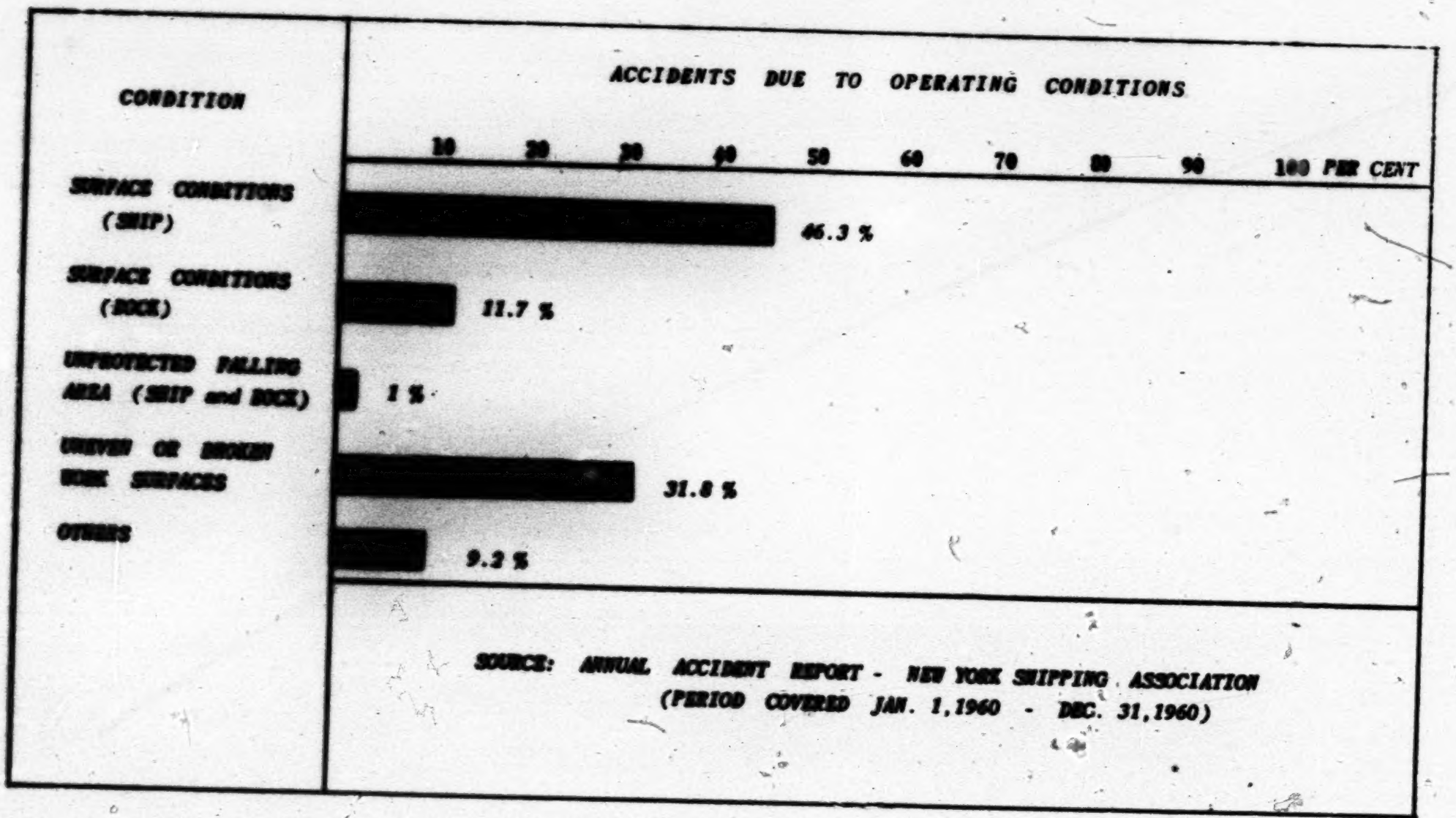
Stevedoring and All Manufacturing Injury Frequency Rates
1942-1954



Figures refer to accidents per million man-hours.

Source: "Longshore Safety Survey", National Academy of Sciences—National Research Council (Publication 488) (1956).


TYPE OF EQUIPMENT
ACCIDENTS DUE TO EQUIPMENT
10
20
30
40
50
60
70
80
90
100 PER CENT
FAILURE OF SHIP'S GEAR
61.4 %
GANGWAYS
LADDERS
23.8 %
UNGUARDED VEHICLES
8.9 %
FAILURE OF STEVEDORE'S GEAR
5.9 %
SOURCE: ANNUAL ACCIDENT REPORT - NEW YORK SHIPPING ASSOCIATION
(PERIOD COVERED JAN. 1, 1960 - DEC. 31, 1960)


CONDITION
ACCIDENTS DUE TO OPERATING CONDITIONS
10
20
30
40
50
60
70
80
90
100 PER CENT
SURFACE CONDITIONS (SHIP)
46.3 %
SURFACE CONDITIONS (DOCK)
11.7 %
UNPROTECTED FALLING AREA (SHIP and DOCK)
1 %
UNEVEN OR BROKEN WORK SURFACES
31.8 %
OTHERS
9.2 %
SOURCE: ANNUAL ACCIDENT REPORT - NEW YORK SHIPPING ASSOCIATION
(PERIOD COVERED JAN. 1,1960 - DEC. 31,1960)